

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 25, 2002

IN RE:

PETITION OF THE TENNESSEE SMALL
LOCAL EXCHANGE COMPANY COALITION
FOR TEMPORARY SUSPENSION OF
47 U.S.C. §§ 251(b) and 251(c) PURSUANT
TO 47 U.S.C. § 251(f) and 47 U.S.C. § 253(b)

DOCKET NO.
99-00613

ORDER ACCEPTING WITHDRAWAL OF PETITION

This matter came before the Tennessee Regulatory Authority ("Authority" or "TRA") at a regularly scheduled Authority Conference held on November 20, 2001 upon the November 6, 2001 filing of the *Tennessee Small Local Exchange Company Coalition's Notice of Withdrawal*.

Background

On August 18, 1999, Tennessee Small Local Exchange Company Coalition (the "Coalition")¹ filed a *Petition* with the Authority requesting a temporary suspension of the requirements of Sections 251(b)(1), (2), (4) and (5) and 251(c) of the Telecommunications Act of 1996 (the "Act"). The *Petition*, filed pursuant to Sections

¹ The Coalition consists of the following member companies: Ardmore Telephone Company, Inc., Century Telephone Enterprises, Inc., CenturyTel of Adamsville, Inc., CenturyTel of Claiborne, Inc., CenturyTel of Ooltewah-Collegedale, Inc. Company, Loretto Telephone Company, Inc., Millington Telephone Company, Inc., TDS TELECOM companies in Tennessee consisting of Concord Telephone Exchange, Tennessee Telephone Company, Tellico Telephone Company, Humphreys County Telephone Company (collectively the "TDS local exchange carriers"), the Telephone Electronics Corp. ("TEC") companies in Tennessee including Crockett Telephone Company, Inc., Peoples Telephone Company, Inc., West Tennessee Telephone Company, Inc. and United Telephone Company, Inc. Each member of the Coalition claims to be a rural telephone company within the meaning of 47 U.S.C. § 153 (37).

251(f)(2) and 253(b) of the Act, seeks the suspension of the requirements of interconnection until "such time as the regulatory policies tailored to preserving universal service and maintaining affordable rates in rural service areas can be finally developed and implemented at the State and Federal levels."²

At a regularly scheduled Authority Conference held on October 26, 1999, the Authority voted unanimously to open a contested case in this docket. Thereafter petitions to intervene filed by US LEC of Tennessee, Inc. ("US LEC"), the Southeastern Competitive Carriers Association ("SECCA"), Hyperion of Tennessee, L.P. ("Hyperion") and AT&T Communications of the South Central States, Inc. ("AT&T") (collectively referred to as "the Intervenors") were granted. General Counsel or his designee was appointed to serve as the Pre-Hearing Officer for the purpose of establishing issues and otherwise preparing this matter for consideration by the Authority.

On January 14, 2000, US LEC filed with the Authority notification, pursuant to 47 U.S.C. § 251(f)(1), of its "bona fide request" to TDS Telecom for an interconnection agreement with TDS and its local exchange operating companies. US LEC's notification and the subsequent filings related thereto were filed in TRA Docket No. 00-00026.

On March 17, 2000, a Pre-Hearing Conference was held in this docket, TRA Docket No. 99-00613, during which the parties discussed the potential effect of a decision on the Coalition's *Petition* in this case upon US LEC's request for interconnection in TRA Docket No. 00-00026. The parties agreed that a decision in this docket resulting in a suspension of the requirements for interconnection set forth in Section 252 of the Act would act as a suspension of US LEC's request. During this discussion, counsel for US LEC stated further that a determination of the Coalition's

² See *Petition*, TRA Docket No. 99-00613, p. 3 (August 18, 1999).

Petition in this docket would likely determine whether or not US LEC would proceed with its request filed in TRA Docket No. 00-00026. The parties reached an agreement that US LEC's request would be held in abeyance pending a determination of the Coalition's *Petition*. US LEC agreed to waive the requirement set forth in 47 U.S.C. § 251(f)(1)(B) that the agency decide whether to terminate TDS Telecom's exemption from the requirements of 47 U.S.C. § 251(c) within one hundred and twenty (120) days after receiving notice of the bona fide request.³

Following the completion of discovery and the filing of pre-filed testimony, hearing dates were set for August 22 and 23, 2000.⁴ The Hearing was postponed to permit the parties to address the impact of the Eighth Circuit Court of Appeals' decision in *Iowa Utilities Board v. FCC*⁵ on the conduct of this proceeding.⁶ A Pre-Hearing Conference was held on August 22, to discuss the impact of the *Iowa Utilities* case and revise the procedural schedule.

A Status Conference was convened on December 14, 2000, during which counsel for the Coalition made an oral request to have the setting of a Hearing in this matter deferred until the completion of TRA Docket No. 00-00523, the Universal Service for Rural Areas – Generic Docket (the “Rural Universal Service Docket”). As grounds for the request, counsel for the Coalition stated that the resolution of certain issues in the Rural Universal Service Docket would directly affect the

³ The Coalition has contested US LEC's representations that the request meets the criteria for being a “bona fide request” under 47 U.S.C. § 251(f)(1). Transcript of Proceedings, March 17, 2000, pp. 39-42.

⁴ AT&T withdrew its intervention on August 11, 2000.

⁵ *Iowa Util. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000) cert. granted in part, 531 U.S.1124, 121 S.Ct. 877, 148 L.Ed.2d 788 (2000).

⁶ In advance of the Pre-Hearing Conference, the parties filed written comments on August 18, 2001, addressing the *Iowa Util. Bd. v. FCC* opinion.

resolution of similar issues in this docket. Counsel for the Intervenor's opposed the Coalition's request, stating that deferring this matter would cause an unnecessary delay in resolving this docket.

On December 18, 2000, the Pre-Hearing Officer issued the *Order Establishing Schedule for Filing Comments or Memoranda and Setting a Hearing Date*. In the event the Coalition's request to hold this docket in abeyance was denied, the Hearing was scheduled for February 14, 15 and 16, 2001, subject to the approval of the Authority.

On December 29, 2000, at the Pre-Hearing Officer's direction, the Coalition filed *Petitioner's Request To Defer Hearing Until Conclusion Of TRA Docket No. 00-00537 and Memorandum in Support*, arguing that the Rural Universal Service Docket is likely to resolve a number of issues central to the resolution of this docket and the Coalition and its subscribers will be subjected to significant harm if competition through interconnection is permitted in the absence of universal service funding mechanisms. Consistent with this reasoning, the Coalition further requested that the Authority defer US LEC's request for interconnection in TRA Docket No. 00-00026 pending resolution of the Rural Universal Service Docket.

On January 5, 2001, the Intervenor's filed *Reply of US LEC of Tennessee, Hyperion of Tennessee, LP, and the Southeastern Competitive Carriers Association to Petitioner's Request to Defer Hearing Until Conclusion of Docket No. 00-00537*. The Intervenor's argued that a decision to grant the Coalition's Request would be equivalent to granting the same substantive relief requested in the Coalition's Petition without requiring the Coalition to satisfy any of the federal statutory criteria necessary for

suspension. US LEC also specifically objected to any further delay in its request for interconnection in TRA Docket No. 00-00026.

During the week of February 5, 2001 the proposed hearing dates were continued by agreement of the parties. On July 13, 2001, the Pre-Hearing Officer received a letter from counsel for US LEC, requesting that this matter be reset for a hearing. The Coalition filed a letter in response on August 31, 2001, reiterating its request to stay this proceeding pending the conclusion of TRA Docket No. 00-00523.

On October 4, 2001, the Pre-Hearing Officer issued the *Initial Order Denying the Tennessee Small Local Exchange Company Coalition's Request to Defer Hearing Until Conclusion of Docket No. 00-00523 and Establishing Procedural Schedule*, finding that the Coalition provided insufficient grounds to support its request to defer the Hearing. In addition, the Pre-Hearing Officer analyzed the effect of the *Iowa Utilities* case on the burden of proof in this docket, concluding that the burden of proof for suspensions and modifications for rural carriers was unchanged and rested on each member of the Coalition.

The Coalition's Notice of Withdrawal

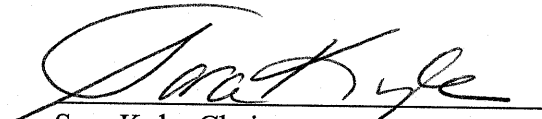
The Coalition filed its *Notice of Withdrawal* on November 6, 2001. The *Notice* stated that the Coalition intended to withdraw its *Petition* in this case without prejudice. The *Notice* further stated that the intervenors did not object to the withdrawal of the *Petition*.

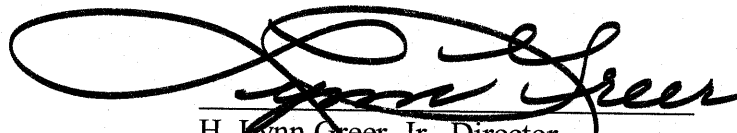
At a regularly scheduled Authority Conference on November 20, 2001, the Authority deliberated the Coalition's *Notice of Withdrawal*. After hearing from the

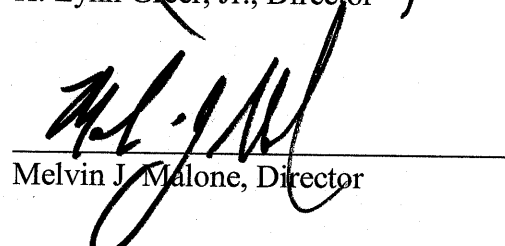
Coalition and from the Intervenor, which voiced their lack of an objection to the withdrawal of the *Petition*, the Authority voted unanimously to accept the withdrawal.

IT IS THEREFORE ORDERED THAT:


The Tennessee Small Local Exchange Company Coalition's Notice of Withdrawal is granted and this docket is closed.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary